Supreme Court, U.S.
FILED
AUG 1 1985
JOSEPH F. SPANIOL, JR.
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No. 84-1538 (16)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

ALEXANDRA FISHER, an individual;
MARGUERITE JACOBS, an individual;
MORT BAKER, an individual;
RICHARD LAWHORN, an individual;
ANTHONY KERSHAW, an individual;
and LEVIN-ZEMEL, INC., a corporation,

Appellants,

vs.

CITY OF BERKELEY, CALIFORNIA, a municipal corporation;
THE BERKELEY CITY COUNCIL; THE BERKELEY RENT
STABILIZATION BOARD; DOES I through XX, inclusive,

Appellees.

On Appeal from the Supreme Court of the State of California

JOINT APPENDIX

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APPENDIX A

FILED
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF ALAMEDA

ALEXANDRA FISHER, an individual; MARGUERITE JACOBS, an individual; MORT BAKER, an individual; RICHARD LAWHORN, an individual; ANTHONY KERSHAW, an individual and LEVIN-ZEMEL, a corporation; on behalf of themselves and all others similarly situated;

Plaintiffs,

v.

THE CITY OF BERKELEY, a municipal corporation; THE BERKELEY CITY COUNCIL; THE BERKELEY RENT STABILIZATION BOARD; DOES I through XX, inclusive,

Defendants.

No. 536602-6

COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTIONS; DECLARATORY RELIEF

FIRST CAUSE OF ACTION

(Declaratory Relief)

1. Plaintiffs RICHARD LAWHORN, MORT BAKER, ALEXANDRA FISHER, and MARGUERITE JACOBS are, and at all times relevant have been, residents and voters of the City of Berkeley, and the owners of apartment buildings located within that City and rented for residential purposes.

2. Plaintiff ANTHONY KERSHAW is and at all times relevant has been an owner of rental units in the City of Berkeley which are rented for residential purposes. Plaintiff LEVIN-ZEMEL is and at all times relevant has been a California corporation and the owner of an apartment building located in the City of Berkeley and rented for residential purposes.

3. At all times relevant, including within the past year, plaintiffs and each of them have paid taxes in and to the City of Berkeley.

4. Defendant City of Berkeley is a municipal corporation, a public entity and a Charter City, existing under the Constitution and laws of the State of California, located in the County of Alameda.

5. Defendant Berkeley City Council is composed of officers and agents of the City of Berkeley.

6. Defendant Berkeley Rent Stabilization Board is a board of Berkeley citizens created by and pursuant to the adoption of Measure D on the Berkeley municipal ballot for the June 3, 1980 election and appointed by the Berkeley City Council.

7. Plaintiffs lack information and belief as to the true names and capacities of defendants Does I through XX, and for that reason sue said defendants by said fictitious names. When their true names and capacities are ascertained, plaintiffs will amend this complaint by inserting their true names and capacities herein.

8. On November 7, 1978, the electorate of the City of Berkeley passed a Renter Property Tax Relief Ordinance.

9. On November 27, 1979, the Berkeley City Council passed an ordinance establishing a Temporary Rent Stabilization Program, effective until June 30, 1980.

10. On June 3, 1980, a majority (but less than ⅔) of voters in the City of Berkeley authorized to vote thereon and who voted, voted in favor of Measure D on the municipal ballot and thereby adopted an ordinance entitled "Adopting A Rent Stabilization And Eviction for Good Cause Program", a true and correct copy of which is attached hereto as Exhibit A incorporated herein by this reference. Said ordinance is hereinafter referred to as the "Ordinance." As a consequence, the Ordinance of its own terms, and without more, has become and is the subject of enforcement as law in the City of Berkeley and various acts and events have occurred and will occur including without limitation the following:

a. Within 30 days of adoption of the Ordinance, members of the Berkeley City Council appointed a Rent Stabilization Board ("the Board") to exercise certain powers and duties as set forth in the Ordinance.

b. The Ordinance and Board require that all landlords file with the Board by September 1, 1980 a rent registration statement for each rental unit covered by the Ordinance. The Board has formulated and issued detailed registration forms which the Ordinance requires owners to completely fill in and file with the Board no later than September 1, 1980.

c. A registration fee of twelve dollars ($12.00) per rental unit must be paid by the Owner to the Board no later than September 1, 1980.

d. Failure to file the registration statement and registration fee will result in imposition of an additional $12.00 penalty charge for each rental unit not registered.

e. After adoption of the Ordinance, it is unlawful to charge rent on a regulated rental unit in an amount greater than the lawful rent due and payable on May 31, 1980 in

accordance with the provisions of the Temporary Rent Stabilization Program unless the Board sets a different rent in accordance with sections 11 and 12 of the Ordinance.

f. The Board may grant annual citywide rent increases or decreases based upon changes in costs of utilities, property taxes, and maintenance and operating expenses.

g. The intent of the Ordinance is to restrict the Board to grant rent increases only when the landlord demonstrates it is necessary to provide a landlord with a fair return on investment.

h. Special defenses, conditions precedent, causes of action and burdens of proof will be applicable to unlawful detainer actions, notwithstanding any existing state law or pre-existing agreements of the contracting parties to the contrary.

11. The Ordinance both on its face and in its application violates the Constitutions and laws of the United States and of the State of California. More particularly, the Ordinance:

a. Constitutes a taking of property for public use without just compensation and due process in contravention of the Fourteenth Amendment of the United States Constitution and Article I, section 19 of the California Constitution.

b. Constitutes a violation of the right to due process of law in contravention of the Fourteenth Amendment of the United States Constitution and Article I, section 7 of the California Constitution.

c. Constitutes a denial of equal protection of the laws in violation of the Fourteenth Amendment of the United States Constitution and Article I, section 7 and Article IV, section 16 of the California Constitution.

d. Constitutes a violation of the right of privacy of personal affairs in contravention of the Fourth Amendment of the United States Constitution, and Article I, section 1 of the California Constitution.

e. Constitutes an impairment of the obligation of contracts in contravention of Article I, section 10 of the United States Constitution and Article I, section 9 of the California Constitution.

f. Constitutes an attempt to regulate an area preempted by legislation of the State of California.

g. Constitutes an illegal restraint on alienation of real property in violation of legislation and public policy of the State of California.

h. Imposes a tax on the owners of residential rental property in the City of Berkeley in violation of Article XIIIA of the California Constitution.

12. An actual controversy has arisen and now exists between plaintiffs and defendants, and each of them, concerning their respective rights, duties and obligations under and arising out of the Ordinance. Plaintiffs contend that the Ordinance is unconstitutional, unlawful, and invalid on its face and in its operation and are informed and believe and thereupon allege that defendants, and each of them, dispute such contention and contend that the Ordinance is valid and enforceable in all respects.

13. Plaintiffs desire a judicial determination of the validity and enforceability of the Ordinance and the rights, duties and obligations of the parties with respect thereto.

14. Such a declaration is necessary and appropriate at this time in order that plaintiffs may ascertain their rights, duties and obligations under the Ordinance, to avoid great and irreparable injury to the parties, and to avoid a multiplicity of litigation with respect to the validity, enforceability, and meaning and effect of the Ordinance.

SECOND CAUSE OF ACTION

(For Injunction Against Enforcement)

15. Paragraphs 1 through 13, inclusive, of plaintiffs' First Cause of Action are incorporated herein by this reference.

16. Each of the plaintiffs herein currently leases rental units governed by the Ordinance.

17. The costs of operation of the rental units in Berkeley owned and leased by plaintiff RICHARD LAWHORN are now in excess of the rental income from those units and the "negative cash flow" to plaintiff LAWHORN is three hundred fifty dollars a month. When said units were acquired in 1977 the prevailing rents were such to permit plaintiff LAWHORN to "break even." Current restricted rent levels jeopardize the ability of said plaintiff to make payments on his mortgage loans and not to default on said payments.

18. Plaintiff ALEXANDRA FISHER purchased after January 1, 1980, a building in Berkeley which contains four (4) rental units, one of which she occupies. Plaintiff FISHER is unable with the current restricted rents to "break even" on her property payments and has a "negative cash flow" on said property. Plaintiff FISHER owns no other real property.

19. Plaintiff MARGUERITE JACOBS owns a five (5) unit building in Berkeley which she and her late husband had constructed in 1961 and prior to enactment of the Ordinance in her opinion and that of an appraiser had a fair market value of approximately $150,000. Said building in her opinion and that of an appraiser currently has an estimated fair market value of $117,000 as a result of the Ordinance.

20 Plaintiff LEVIN-ZEMEL, INC. owns a building in Berkeley which said plaintiff's predecessor had constructed in the 1960's and with respect to which said plaintiff's equity is substantial when compared to a relatively small cash investment.

21. Plaintiff ANTHONY KERSHAW owns buildings in Berkeley which he purchased numerous years ago and has greatly increased the value of through thousands of hours of his own labor and improvements he has made thereon.

22. Absent the relief sought hereby:

a. No rent may be increased except by order of the Rent Control Board.

b. Plaintiffs and others similarly situated who desire to sell their rental units will be forced to sell said units at values greatly below the fair market value of said units prior to enactment of the Ordinance.

c. Many plaintiffs and others similarly situated who are in a "negative cash flow" position will not be able raise their rents sufficiently to reach a "break even" position.

d. From and after the adoption of the Ordinance plaintiffs are precluded from seeking or obtaining recovery of possession of their rental units except on the terms specified by section 13 and 14 of the Ordinance and will be subject to the terms of section 15 of the Ordinance.

23. As a consequence of the foregoing, the Ordinance is unconstitutional and its enforcement will cause great and irreparable injury to the plaintiffs. and each of them for the following reasons:

The rent freeze and restrictive future rent increases will result in a loss of income and revenues for plaintiffs and each of them. Such loss cannot, pursuant to the Ordinance be recouped through future increased rentals. The Ordinance mandates that all future rents be set by the Rent Board, which Board has no power to direct that tenants who had benefitted from frozen rents or rollback rents subsequently remit to the landlord the difference between such rents and the proper adjusted rent subsequently set by the Board. Nor does the Board have the power to subsequently set future rents at a rate which will recoup the lost rental for prior periods and/or from prior

tenants nor to remit such amounts from its or the City's funds to injured lessors. The amount of such unrecoverable loss is undeterminable for the reason that the Rent Board need not conduct hearings or set rents until October 31, 1980 and December 31, 1980 respectively. Yet the freeze and other provisions will absent the relief here sought, be in effect at all times from and after the adoption of the Ordinance. In consequence, enforcement of the freeze and rent setting provisions of the Ordinance will constitute a violation of the constitutional guarantees herein enumerated.

THIRD CAUSE OF ACTION

(Injunction Against Waste of Funds)

24. Paragraphs 1 through 13, inclusive, of plaintiffs' First Cause of Action are incorporated herein by this reference.

25. The appointment of Board Members, as well as other actions and events more specifically set forth in the Ordinance, will from the date of adoption and thereafter require the expenditure of funds, time, and effort by the City of Berkeley.

26. In consequence of the foregoing, the individual defendants will, in the absence of the relief here sought, be required and obliged to expend and to authorize the expenditure of funds and property of the City of Berkeley in compliance with the Ordinance.

27. Such expenditures will be illegal and will constitute a waste of public monies for the reason that the Ordinance violates the Constitutions and laws of the United States and of the State of California as more particularly set forth in the First Cause of Action in this Complaint.

FOURTH CAUSE OF ACTION

(Injunction Against Violation of California Environmental Quality Act)

28. Paragraphs 1 through 27, inclusive of the Complaint are incorporated herein by this reference.

29. The California Environmental Quality Act (Public Resources Code section 21001, et seq.) requires that an environmental impact report must be prepared and filed prior to the direct undertaking of activities by a public agency, unless the activity is exempt by law.

30. The activities to be undertaken by the Berkeley Rent Stabilization Board pursuant to the Ordinance are not exempt from the requirements of the California Environmental Quality Act.

31. By failing and refusing to prepare and file an environmental impact report with respect to its activities under the Ordinance, the Berkeley Rent Stabilization Board is in violation of the California Environmental Quality Act and the Board's activities in administering the Ordinance must be enjoined.

WHEREFORE, plaintiffs pray:

1. For a declaration that the Ordinance is unconstitutional, invalid, and unenforceable, on its face and/or in its operative effect, and that none of the parties hereto have any right, duty or obligation to comply with the terms or provisions thereof.

2. For a preliminary injunction enjoining defendants, and each of them, and all those acting by, through, for, on behalf of, in concert with them, or pursuant to any of the provisions of the Ordinance, during the pendency of this action, from authorizing or engaging in, directly or indirectly, the enforcement of the Ordinance in its entirety and/or any of the following provisions of the Ordinance: Sections 4(f), 11, 12(c), and (i), 14 and 15.

3. For a permanent injunction enjoining defendants, and each of them, and all those acting by, through, for, on behalf of, in concert with them, or pursuant to any of the provisions of the Ordinance, from authorizing or engaging in, directly or indirectly, the enforcement of the Ordinance in its entirety and/or any of the following provisions of the Ordinance: Sections 4(f), 8, 11, 12, 13, 14 and 15.

4. For a preliminary injunction enjoining the defendants and each of them and all those acting by, through, for, on behalf of, or in concert with them, during the pendency of this action, from authorizing, engaging in or performing, directly or indirectly, the expenditure of funds of the City of Berkeley to enforce, attempt to enforce, or comply with, each, any and/or all of the provisions of the Ordinance, and particularly, sections 4(f), 11, 12(c) and (i), 14 and 15.

5. For a permanent injunction enjoining the defendants and each of them and all those acting by, through, for, on behalf of, or in concert with them, from authorizing, engaging in or performing, directly or indirectly, the expenditure of funds of the City of Berkeley to enforce, attempt to enforce, or comply with, each, any and/or all of the provisions of the Ordinance.

6. For costs of suit, including reasonable attorneys' fees.

7. For such other and further relief as the court deems just.

Dated:

DOBBS & NIELSEN

By_____
JAMES R. PARRINELLO, Esq.,
Attorneys for Plaintiffs

VERIFICATION

I, ALEXANDRA FISHER, am a plaintiff in this action.

I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except to those matters which are thereon stated on information and belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration is executed on August 18, 1980, in Berkeley, California.

_____
ALEXANDRA FISHER

APPENDIX B

FILED
SEP 15 1980
RENE C. DAVIDSON,
County Clerk
By _____
Delane Williams,
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

ALEXANDRA FISHER, et al.,
Plaintiffs,

vs

CITY OF BERKELEY, et al.,
Defendants.

No. 536602-6

ANSWER

Defendants answer the complaint as follows:

1. Defendants lack sufficient information or belief to answer paragraphs one through three and therefore deny the allegations of those paragraphs.

2. Defendants admit the allegations of paragraphs 4 through 9.

3. In answer to paragraph 10, Defendants admit that on June 3, 1980, the electorate of Berkeley enacted Measure D, a copy of which is attached to the complaint as Exhibit A, and which speaks for itself.

4. Defendants deny the allegations of paragraph 11.

5. In answer to the allegations of paragraph 12, Defendants deny that an actual controversy has arisen or exists between Plaintiffs and Defendants.

6. Defendants admit the allegations of paragraph 13.

7. Defendants deny the allegations of paragraph 14.

8. In answer to the allegations of paragraph 15, Defendants incorporate herein paragraphs 1 through 6 above.

9. Defendants lack sufficient information of belief to answer paragraphs 16 through 22, and therefore deny the allegations of those paragraphs.

10. Defendants deny the allegations of paragraph 23.

11. In answer to the allegations of paragraph 24, Defendants incorporate herein paragraphs 1 through 6 above.

12. Defendants admit the allegations of paragraphs 25 and 26.

13. Defendants deny the allegations of paragraph 27.

14. In answer to paragraph 28, Defendants incorporate herein the allegations of paragraphs 1 through 13 above.

15. Defendants admit the allegations of paragraph 29.

16. Defendants deny the allegations of paragraphs 30 and 31.

WHEREFORE, Defendants pray for judgment as follows:

1. For a declaration that Measure D is valid and enforceable;

2. Denying further relief to Plaintiffs;

3. For costs of this suit; and

4. For such other relief as the court deems proper.

DATE: September 12, 1980

MYRON MOSKOVITZ
ANN JUERGENS
Attorneys for Defendants